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OFFICE OF FINANCIAL AND INSURANCE SERVICES
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
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DATE: June 23, 2005

LETTER NO.: 2005-CU-11

TO: The Board of Directors and Management of Michigan State-Chartered Credit Unions

SUBJECT: RegFlex and Its Impact on State-Chartered Credit Unions

This letter replaces Letter 2002-CU-01.

The purpose of this letter is to advise credit union officials of the provisions of NCUA's RegFlex program, which became effective March 1, 2002 for federal credit unions, and how those provisions compare with existing Michigan statutes regarding credit union operations. The RegFlex program is defined in Part 742 of the NCUA Rules and Regulations.

RegFlex Provisions

The provisions of Part 742 allow credit unions meeting certain criteria to become exempt from certain other NCUA requirements outlined in their Rules and Regulations. The criteria for RegFlex status are: receiving a composite CAMEL rating of 1 or 2 for two consecutive exams, and having a net worth ratio of 9.00% or greater. For complex credit unions, as defined by Prompt Corrective Action, the net worth requirement is 9.00% *or* 200 basis points over the minimum level for it to be classified as well-capitalized, whichever is greater.

Specific federal "regulatory relief" offered to qualifying federal credit unions is as follows:

- *Elimination of the 5% Fixed Assets/Assets Limitation under NCUA Rule 701.36(a).* NCUA limits a credit union's total fixed assets to 5% of the credit union's shares plus retained earnings. Michigan state-chartered credit unions are not bound by this limitation. Michigan statute limits the total of *land and building only* to 5% of assets. Michigan credit unions may apply for waivers to the 5% limitation regardless of RegFlex status.

- *Lifting of Certain Investment Requirements under NCUA Rule 703.5(b)(1)(ii).* RegFlex will remove restrictions on certain investment activities of federal credit unions. Michigan state-chartered credit unions are not required to comply with Rule 703. Therefore, the restrictions lifted by RegFlex will not affect Michigan state-chartered credit unions.
- *Lifting of Requirements for Charitable Donations under NCUA Rule 701.25.* Current NCUA rules limit receipt of charitable donations to organizations located in or conducting activities in a community in which the credit union has a place of business. RegFlex will eliminate this requirement. Michigan state-chartered credit unions do not have a similar restriction on charitable donations.
- *Lifting of Limitation of Public Unit and Nonmember Shares under NCUA Rule 701.32(b).* Current NCUA regulations limit the maximum amount of all public unit and nonmember shares to 20% of total shares or \$1.5 million, whichever is greater. Michigan state-chartered credit unions do not have a limitation on public unit and nonmember shares. The Michigan Credit Union Act allows for the receipt of shares from other credit unions, savings banks, savings and loan associations, any other type of depository institution, retirement plans, and governments and their agencies.
- *Lifting Requirement to Monitor Securities under NCUA Rule 703(12)(c).* Current NCUA rules require credit unions to prepare a quarterly report of the sum of the fair value of all complex fixed-rate and variable-rate securities, and if the total exceeds the credit union's net worth to determine the impact of a 300 basis-point shock. There is no such requirement for monitoring securities by Michigan state-chartered credit unions.
- *Lifting Prohibition Against Purchase of Zero Coupon Investments under NCUA Rule 703.16(b).* Current NCUA Rules prohibit the purchase of zero coupon investments with a maturity greater than 10 years. Michigan state-chartered credit unions do not have this prohibition.
- *Lifting Limitation of Maturity on Investments Purchased through Borrowing Repurchase Transactions under NCUA Rule 703.13(d)(3).* Current NCUA rules limit the maturity of investments purchased with funds from a borrowing repurchase transaction to no later than the maturity of the borrowing repurchase transaction. Michigan state-chartered credit unions have no such limit.
- *Lifting the Limitation on Purchase of Commercial Mortgage Related Securities under NCUA Rule 703.16(d).* Current NCUA rules prohibit the purchase of commercial mortgage-backed securities unless they are issued by wholly-owned government corporations, the Federal National Mortgage Association, Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation. Michigan state-chartered credit unions do not have this restriction.

- *Lifting of MBL Collateral and Security Requirements under NCUA Rule 723.7(b).* Currently 723.7(b) requires personal guarantees of principals unless the borrower meets the IRS definition of a not-for-profit organization or a waiver is received from the Regional Director. Meeting the RegFlex requirements exempts a credit union from this requirement and allows the directorate to institute its own policy regarding principal guarantees. The provisions of Rule 723.7(b) do apply to federally-insured state credit unions and thus Michigan state-chartered credit unions must meet this requirement. Therefore, meeting the RegFlex standards would allow a Michigan state-chartered credit union to develop and institute its own policy relating to MBL personal guarantee requirements.

Summary

Most provisions of RegFlex do not directly affect Michigan state-chartered credit unions. Michigan credit union law does not impose the regulatory burdens which RegFlex seeks to alleviate. However, the NCUA's MBL Rule is applicable to state-chartered credit unions and is therefore impacted by the RegFlex provisions relating to that rule.

The Office of Financial and Insurance Services is committed to effective supervision of Michigan state-chartered credit unions without undue regulatory burden, and will continue to promote and protect credit union safety and soundness in that manner.

Sincerely,

Roger W. Little, Deputy Commissioner
Credit Union Division